

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN RIC HOLDEN**, on January 12, 2001 at 3:00 P.M., in Room 422, Capitol.

ROLL CALL

Members Present:

Sen. Ric Holden, Chairman (R)
Sen. Pete Ekegren, Vice Chairman (R)
Sen. Mike Halligan (D)
Sen. Greg Jergeson (D)
Sen. Walter McNutt (R)
Sen. Arnie Mohl (R)
Sen. Linda Nelson (D)
Sen. Gerald Pease (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Laramie Cumley, Committee Secretary
Doug Sternberg, Legislative Services

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 42, SB 160 1/3/01
Executive Action: none.

HEARING ON SB 42

Sponsor: SEN. BEA MCCARTHY, SD 29, Anaconda.

Proponents: Susan Cottingham, Montana Reserved Water Rights Compact Commission.

Opponents: none.

Opening Statement by Sponsor:

SEN. BEA MCCARTHY testified that this is a clarification of Red Rock Lakes Water Compact south of Dillon. This bill is just a brief technical amendment to the Red Rock lakes compact.

{Tape : 1; Side : A; Approx. Time Counter : 2.4}

Proponents' Testimony: Susan Cottingham presented testimony. This testimony was received following the hearing. **EXHIBIT(ags09a01)**

Opponents' Testimony: none.

Questions from Committee Members and Responses: none.

Closing by Sponsor: SEN. MCCARTHY reassured that these were simple amendments.

HEARING ON SB 160

Sponsor: SEN. LORENTS GROSFIELD, SD 13, Big Timber

Proponents:

Don MacIntyre, Montana Department of Natural Resources
and Conservation.

Opponents:

Mark Fix, Northern Plains Recourse Council
Roger Muggli, Tongue and Yellowstone Irrigation
District.
Clint McRae, Rocker Six Cattle Company
Art Hayes Jr., Tongue River Water Users Association
Hope Stevens, Marysville, Montana
Beth Kaeding, Bozeman, Montana
Pat Judge, Montana Environmental Information Center
John Bloomquist, Montana Stockgrowers Association
George Nell, on behalf of himself
James Sweaney, on behalf of himself
John Wilson, Montana Trout Unlimited
Steve Gilbert, on behalf on himself
Jeff Barber, Montana Wildlife Federation
Mike Murphy, Montana Water Resource Association

{Tape : 1; Side : A; Approx. Time Counter : 4.7}

Opening Statement by Sponsor:

SEN. GROSFIELD testified that this bill is to eliminate confusion of water rights and permitting. Examples were given regarding diversion, and language inconsistencies in the existing law. **SEN. GROSFIELD** explained that many times uses of water are not beneficial, but may be necessary.

{Tape : 1; Side : A; Approx. Time Counter : 15.5}

Proponents' Testimony:

Don MacIntyre, representing the **Department of Natural Resources**, presented written testimony for **Director Bud Clinch**. He described the principals of the 1973 Water Use Act - water law and prior appropriation doctrine. The appropriation definition also encompasses a property right, not a permit as a regulatory instrument. This right is a resource in Montana that is considered a protected interest. This law says that a water right after 1973 is a protected interest. A protected interest is then defined in a way which is historically recognized under the laws of Montana prior to 1973 and all of the Western states that were prior appropriation doctrine states. This bill clarifies the Water Use Act to bring consistency with the historic prior appropriation doctrine.

EXHIBIT (ags09a02)

{Tape : 1; Side : A; Approx. Time Counter : 26.3}

Opponents' Testimony:

Mark Fix, **Northern Plains Recourse council**, presented written testimony. **EXHIBIT (ags09a03)**

Roger Muggli, **Tongue and Yellowstone Irrigation District**, explained that the high clay soils in their area are very susceptible to additional salting coming from coal bed methane production. This salt is very difficult to extract. This makes local farm production greatly hampered. This water is needed in wells.

Clint McRae, **Rocker Six Cattle Company**, discussed calculations he had regarding water volume and coal bed methane productions de-watering aquifers at 691,200 gallons per minute. This water needs to be cleaned enough to water cattle and irrigate with and the

coal bed methane company should have to follow the same water right laws as the local farmers and ranchers.

Art Hayes Jr., Tongue River Water Users Association, informed the committee that "water is water." and "coal bed methane water is not just plain water." This bill is going to allow coal bed methane company to store large vast amounts of water in ponds with no water right file. Mr. Hayes explains that this is going to impact his beneficial use by salt water percolating into the ground, the alluvial aquifer, and back into the streams. This water is unfit for livestock and irrigation. He also spoke of a compact with the Northern Cheyenne tribes since 1990, tribal water rights and responsibilities.

Hope Stevens, Marysville, begged that the committee understand the worsening drought in Montana and the amount of farmers and ranchers struggling because of this. She also discussed other problems associated with out-of-state companies.

Beth Kaeding, Bozeman, opposed SB 160. Montana law is so that there can be no monopolization waste or speculation. The Department of Natural Resources believes that coal bed methane development water removal is not a waste. This is giving Montana's future to private coal bed methane companies.

Patrick Judge, Montana Environmental Information Center, presented written testimony. **EXHIBIT (ags09a04)**

John Bloomquist, Montana Stockgrowers Association, testified also for **Lorna Karn, Montana Farm Bureau**. Mr. Bloomquist explained that this is an unreasonable use of water with unintended consequences. Concerns were expressed regarding interjecting something into the law that may be changing the face of waste and beneficial use as it is known today. With something new it is not sure what will happen with the idea of a permit not being required. This new interpretation of rights inserted into this definition of the law says that water right holders can no longer use water right as a means to enforce to protect their water rights. Permitting regarding coal bed methane companies may need some kind of exemption provision. Water rights are historically enjoyed. Mr. Bloomquist also has a personal interest in this matter that he asked to be on the record.

George Nell, on his own behalf, asked that common sense come into play when discussing the waste of water. He spoke of his descendants and their management of water in the west. This water is precious and it should not be wasted. It should be illegal.

Mr. Nell was very much against SB 160.

James Sweaney, on his own behalf, agreed with previous opponents and opposed SB 160.

John Wilson, Montana Trout Unlimited, presented written testimony. Opponents were asked to summarize testimony.

EXHIBIT (ags09a05)

Steve Gilbert, on his own behalf, stated that it will cost millions to face the unknown.

Jeff Barber, Montana Wildlife Federation, testified that the bill did not make sense and it is "too wide open" and that there is worry of what this could cause in the future.

Mike Murphy, Montana Water Resources Association, stated that this water law is confusing, there has not been enough study, and there should be more discussion concerning this bill.

{Tape : 2; Side : A; Approx. Time Counter : 5}

Questions from Committee Members and Responses:

SEN. PETE EKEGREN asked about the restriction for the people who mine coal bed methane when applying for a permit and inquired about the advantages and disadvantages of having or not having a permit. **Don MacIntyre** explained that if a company of that nature were required to have a permit, they would not get a regulatory permit; they would receive a property interest. If they did not have a permit; they would not receive a property interest.

SEN. TOM ZOOK questioned **Mr. MacIntyre** regarding permitting requirements, rules and confusion of some of the language pertaining to diversion. How are permit holders protected from those who interfere with ones' water rights? **Mr. MacIntyre** explained by stating that the law only comes in when there is an unreasonable usage of water or diversion which affects ones well.

SEN. COREY STAPELTON inquired why a company would displace or move millions of tons of water if it would not benefit them? **Mr. MacIntyre** clarified that it is not the water resource itself that is the interest. The interest is the methane.

SEN. STAPLETON asked again why would a company do something so extravagant although it may have been indirectly without benefit? **Mr. MacIntyre** responded by further explaining the definitions of beneficial use in the existing law.

SEN. JON TESTER asked for clarification on when a water right becomes impacted. **Mr. MacIntyre** again stated that the law comes in when the situation is no longer reasonable. A situation was explained referring to artesian wells without pumps that were dropping the level of ground water. This example was unreasonable.

SEN. TESTER asked if this meant that the whole aquifer was de-watered before there was action for being unreasonable? **Mr. MacIntyre** replied by stating that this is not true and that the cost of putting in wells was considered. If the company put in the wells then they would be permitted to remain operating.

SEN. RIC HOLDEN asked if a coal bed methane company wanted to develop gas, would they need to get a permit? **SEN. GROSFIELD** answered no, not a water use permit although there are many other different types of permits. He then referred to a section of law (85-25-10).

SEN. HOLDEN followed by asking without the bill would they have to get a permit? **SEN. GROSFIELD** again answered no.

SEN. HOLDEN referred to the bill and asked for clarification that in the language of this bill it clearly states that the underlined use may not be waste. How does this fit into this issue? **SEN. GROSFIELD** referred to the language of the bill regarding the unreasonable loss of water without benefit.

SEN. HOLDEN spoke of the water rights of the opponents and continued by asking how this new language is going to impact their senior water rights; this new language located in page 8, lines 16-17. **SEN. GROSFIELD** responded by adding that this would not be of protectable interest to these water users. The explanation of the protection available would be on page 8, lines 15-19. The junior water right holder would no longer follow the senior water right holder because there would be no permit. Although this could be amended so that coal bed methane companies would be required to have a permit.

SEN. HOLDEN asked about the difference in the language to date and the proposal language on page 7. **SEN. GROSFIELD** felt that there was no difference and asked **Mr. MacIntyre** to clarify this question. **Mr. MacIntyre** informed the committee that individuals involved in agriculture projects would be better off without having to establish a water right.

SEN. HOLDEN clarified that he himself has a water right in which this company would either have to buy from him or apply for a

junior water right. Therefore, if the river was contaminated he would have a cause of action. **Mr. MacIntyre** agreed on this principle and explained that although they do not have a property interest, the same rights still apply to his.

SEN. HOLDEN commented that the company would not want a water right at this point because the water had already been contaminated. **Mr MacIntyre** noted that this is not a consequence of the water law. This would be caused by other regulatory activities.

SEN. HOLDEN noted that this is an awful thin line between a water quality issue and a protectable interest issue. This is trying to be presented as two different issues. **Mr. MacIntyre** discussed the departments' views.

Closing by Sponsor:

SEN. GROSFIELD closed SB 160 by discussing inconsistencies in this language as it is, water quality concerns, the coal bed methane issues and the options for this bill regarding the actions that can be taken or amendments which could be placed on the bill. Also the concerns and ideas of the departments or organizations involved or may be involved in the future were addressed.

SEN. HOLDEN noted that **SEN. EKEGREN** will chair Monday's hearing.

ADJOURNMENT

Adjournment: 5:05 P.M.

SEN. RIC HOLDEN, Chairman

LARAMIE CUMLEY, Secretary

RH/LC

EXHIBIT (ags09aad)